

The Gazette



of India

EXTRAORDINARY
PART II—Section 3
PUBLISHED BY AUTHORITY

No. 37] NEW DELHI THURSDAY, JANUARY 23, 1958/MAGHA 3, 1879

ELECTION COMMISSION, INDIA

NOTIFICATION

New Delhi, the 11th January 1958

S.R.O. 339.—Whereas the election of Shri Alwa Joachim Piadad, Journalist, 9, Fair House, Sohani Road, Upper Colaba, Bombay, as a member of the Lok Sabha from the Kanara Parliamentary Constituency of that Sabha, was called in question by an election petition duly presented under Part VI of the Representation of the People Act, 1951 (43 of 1951), by Shri Shanbhag Narasinha Govind, Pleader, Kumta, District North Kanara, Mysore;

And whereas the Election Tribunal appointed by the Election Commission in pursuance of the provisions of section 86 of the said Act, for the trial of the said election petition, has, in pursuance of the provisions contained in in section 103 of the said Act, sent a copy of its order in the said election petition to the Commission;

Now, therefore, in pursuance of the provisions of section 106 of the said Act, the Election Commission hereby publishes the said order of the Tribunal.

ELECTION PETITION No. 295/1957

ELECTION TRIBUNAL, KARWAR

Narasinha Govind Shanbhag, Age 62, Occupation Pleader, Kumta—Petitioner

Vs.

Alwa Joachim Piadad, Age 51, Journalist of Bombay—Respondent

N. S. Metrani, B.A., LL.B., District & Session Judge, Belgaum, (Member, Election Tribunal)
Shri K. V. Kulkarni and Shri S. K. Venkatarangiangar (Advocate)

The Petitioner is an elector in the Parliamentary Constituency No. 228 (Kanara North) and his name is recorded in the Voters' list at serial No. 252 of Kumta Municipal Ward No. E. The Respondent and three others, *viz.*, Dr. Divekar of Bombay, Shri Malagaonkar of Supa and Shri Shambhu Bhat of Kumta contested the last Parliamentary election which was held in the Constituency from 25th February, 1957 to 6th March, 1957. The Respondent was the Congress Party Candidate and was declared returned on 13th March, 1957. He polled 1,18,550 votes, while Dr. Divekar polled 62,783, Shri Malagaonkar 50,265 and Shri Shambhu Bhat 11,269. The Parliamentary Constituency consisted of eight Assembly Constituencies, *viz.*, Sampgaon No. 2, consisting 46,910 voters, Khanapur 65,100, Karwar 52,800, Ankola 51,330, Kumta 55,060, Honavar 52,998, Sirsi 46,462 and Sagar 55,909.

2. The Petitioner seeks to set aside the election of the Respondent to the North Kanara Parliamentary Constituency and to disqualify him to contest elections for a period of six years on the following grounds:—

- (a) Leaflets were issued in Sirsi, Kumta and Honavar Assembly Constituencies interfering with the free exercise of the electoral right within the mischief of Section 123(2), (3) and (5) of the Representation of the People Act, 1951.
- (b) A leaflet under the signature of Shri Sarvadrendra Saraswati Swami Shri Swarnawalli Math Maha Samsthan of Sonda in Sirsi Taluka was distributed in Sirsi

and Kumta Constituencies enjoining the devotees of the Math to vote for the Congress Party only, which obviously refers to the Respondent so far as the Parliamentary Constituency is concerned. Shri Sarvadendra Saraswati Swami is a religious head of Havik and Kshatriya communities numbering more than 100,000, not less than half of whom are voters. By issuing this leaflet the Swami ordained all his disciples to exercise their electoral right in favour of the Respondent alone, independent of their individual inclination. This leaflet threatens the electors with spiritual censure in case the voters voted otherwise.

- (c) The second leaflet was issued under the signature of Shri Ratnavarma Heggade of Dharmasthal. It emanated from the holy place of Dharmasthal. The holy Shrine there, is sacred to the Hindus in south India and Kanaraites have implicit and abiding faith in that holy Shrine. Shri Ratnavarma Heggade occupies a unique role in the temple of Shri Manjunath Dev at Dharmasthal. It is believed that the Heggade family of Dharmasthal inherits from generation to generation the divinity of Shri Manjunath Dev, and that for all purposes Heggade family man is a mouth-piece of Manjunath Deity. In this situation any disobedience of his direction is regarded as incurring divine displeasure.
- (d) Another leaflet was issued by the heads of Harakantra community of 18 villages in Kumta Constituency. They appealed to their community people to vote for the Congress Party Candidate only. This appeal is manifestly communal and rouses communal feeling in the community and prevents the electors effectually from exercising their votes according to their reason.
- (e) A leaflet was circulated under the signatures of the Muslim leaders of Dharwar district appealing to the Muslim voters to vote for the Congress Party Candidate and the signatories included the Presidents of Anjuman-E-Islamia institutions, which are professedly communal organisations. This leaflet was given wide publicity in the North Kanara Parliamentary Constituency and it prevented the Muslim voters in that part of the Constituency from voting independently. In other words, the votes were canvassed on communal lines.
- (f) Another leaflet was issued under the signature of Venkataraman Venkappa Patgar, who styled himself as the President of North Kanara District Tenants and Labourers Association, Kumta. There is no such Association there. The leaflet is obviously meant for the Patgar community and is addressed to that community to vote for the Congress Candidate only. This is a communal appeal and amounts to undue influence.
- (g) The "Sunday Sakal" a Marathi Weekly of Poona, published a news-letter from its correspondent from Karwar under date 15th February, 1957 to the effect that one of the independent Candidates, viz., Shri M. D. Malagaonkar, was supported in the election by anti-Congress capitalists association and that he had paid the five Assembly Candidates in the North Kanara district Rs. 8,000 each for his election propaganda. This news-item was published on behalf of the Congress Candidates damning the candidature of Shri Malagaonkar and showing him up as a corrupt person in the eyes of the electors. The news-item was false and malicious and was published in the news paper on the front page and was given wide publicity in the whole district.

3. The Petitioner alleges that the above leaflets were published in the Constituency between 22nd February 1957 and 4th March, 1957 and that the news-item in the 'Sakal' news paper was circulated from 17th February, 1957 to 28th February, 1957. According to him, the leaflets were printed in the Shri Ramkrishna Printing Works Private Ltd., Kumta, and Shri Sharada Mudranalaya, Sirsi, where all the propaganda literature of the Congress Party and of the Congress Committees was printed. So, the leaflets were published on behalf of the Congress Party Candidates with their knowledge and consent. Under the circumstances, the Petitioner prays that the petition be allowed with costs.

4. The Respondent by his written statement (ex. 17) contends that the verification made by the Petitioner in the petition is not proper and is accordance with the legal requirements and that it is liable to be dismissed on this very ground without entering into the merits of the petition. Even on merits, he says, the petition is liable to be rejected in limine, in that there has been no allegation of any corrupt practice against him and the only alleged corrupt practices so called are those set forth in paragraph 4 of the petition as having been committed by others. He denies all knowledge about the leaflets referred to in paragraphs 4(b) to 4(f) and points out that, even according to the Petitioner, the leaflets contain only an appeal to vote for the Congress Party, which is a perfectly justifiable act, and there can be no question of corrupt practice in regard to such an appeal. He asserts that there is nothing in any of these leaflets which comes within the purview of Section 123 of the Representation of the People Act, 1951. As regards the leaflets referred to in paragraph 4(d), (e) and (f), he submits that far from rousing communal feeling they have the effect of suppressing it, as the Congress Party stands for the conception of a secular state in which communal feelings as such have no scope for play.

5. Regarding the publication in the Marathi weekly news-paper Sakal, the Respondent contends that on the Petitioner's own submission, if its correspondent publishes a news-item as against another candidate which is false and malicious, it is for that candidate to take appropriate action against the publisher and the person who published the defamatory matter. However, that matter has no relevancy in an election petition and it is false and mischievous to allege that the news-item was published on behalf of the Congress Candidates.

6. The Respondent categorically denies that the leaflets were published on behalf of the Congress Party Candidates with their knowledge and consent and says that he is not aware of the publication of the leaflets or the circulation of the news-item in Sakal. He further says that he is not aware of the said leaflets, being printed either in Shri Ramkrishna Printing Works Private Ltd., Kumta, or in Sharda Mudranalaya, Sirsi. He disowns his connection with the propaganda literature of the Congress Party or the Congress Committees being printed in any press. According to him, the only pamphlet which he published was the one that he got printed at Bombay and it contains his biographical sketch and the work done by him for his Constituency. He suspects that some leaflets must have been got published by the contesting candidates to invent some cause of action against him and to malign the Congress Party.

7. In the end the Respondent prays that the petition be dismissed with exemplary costs.

8. Upon these pleadings the following issues are raised at ex. 28:—

- (1) Whether the Petitioner proves the leaflets and publications specified in para 4 of his petition?
- (2) Whether he proves that the said leaflets and publications were known to the Respondent and that they were published on behalf of the Congress Party Candidates with their knowledge and consent?
- (3) Whether they could be used against the Respondent?
- (4) Whether the matter contained in them comes within the mischief of Section 123(2) and (3) of the Representation of the People Act, 1951?
- (5) Whether the news-item referred to in para 4(g) of the Petition published in the Marathi weekly "Sakal" was published on behalf of the Congress Candidates with their knowledge and consent?
- (6) If so, whether the matter contained therein amounts to corrupt practice?
- (7) Even if the leaflets and publications specified in para 4 of the petition were published by any person acting with the consent of the Congress Candidates, has the result of the elections, in so far as it concerns the Respondent as a returned candidate, been materially affected?
- (8) What order?

9. My findings are:—

- (1) Yes.
- (2) No; leaflets (exhs. 35, 36, 37, 38 and 39) were printed and published on behalf of the Assembly Congress Party Candidates Shri J. H. Shamsuddin and Shrimati Vasantalata Vimalanand Mirjankar with their knowledge and consent.
- (3) No.
- (4) No.
- (5) No.
- (6) Does not survive. If, however, issue No. 5 is found in the affirmative, the finding on issue No. 6 will be in the negative.
- (7) No.
- (8) As under.

REASONS

10. Issue No. 1.—The question of proof of the leaflets does not present much difficulty. During the course of the trial the learned Advocate for the Respondent submitted that he had no objection to exhibiting the leaflets exhs. 31 to 39 and also the news-item appearing in the Sunday edition of the Sakal news-paper (ex. 43) in token formal proof and, therefore, they were exhibited. None from the Sharda Mudranalaya, Sirsi, was summoned or examined by the Petitioner to prove the leaflets (ex. 34). But since that leaflet has been re-printed in the Ramkrishna Printing Works Private Ltd., Kumta, by its Managing Director Shri Vimalanand Mangesh Mirjankar (ex. 65), who happens to be the husband of one of the Assembly Congress Candidates, viz., Vasantalata, no strict proof of the leaflet (ex. 34) is insisted upon. The re-print is at ex. 35. Exhibit 37 also is a re-print of the leaflet issued by the Muslim leaders of Dharwar district. Admittedly, the

leaflets (exhs. 35 to 39) have been printed in the Ramkrishna Printing Works Private Ltd., Kumta of which Vimalanand Mangesh Mirjankar (ex. 65) is the Managing Director and he admits that either Shri Shamsuddin or Shrimati Vasantalata got the leaflets printed or re-printed in his press and paid the bills. Under the circumstances, there is no difficulty in holding that the leaflets (exhs. 34 to 39) have been proved by the Petitioner.

11. *Issues Nos. 2 and 3.*—These issues may be taken together for consideration, as they are inter-dependent. Although the Petitioner has proved the leaflets (exhs. 34 to 39), he has not adduced sufficient and convincing evidence to show that they were known to the Respondent. His own witness Vimalanand Mangesh Mirjankar (ex. 65), in whose press the leaflets (exhs. 35 to 39) were printed admits without equivocation in his cross-examination that the Respondent never called at his Press and that he (Respondent) had nothing to do with any of the leaflets produced in this case. The Respondent, who is examined at ex. 66, denies all knowledge regarding the printing of any of these leaflets at the instance of either Shri Shamsuddin or Shrimati Vasantalata Mirjankar, and says that it is only after this petitioner that he came to know of the various leaflets issued. He further says that none of the voters in his Constituency drew his attention to these leaflets. I am inclined to accept his testimony as it should be probable and natural.

12. The Petitioner says in his evidence-in-chief that the Congress Committee made propaganda in favour of the Congress Candidates, that they got the leaflets printed and published and that the leaflets were distributed all over the district by the Congress Party people. At the same time he admits that the bills were actually paid by the Assembly Congress Candidates Shri Ramkrishna Heggade of Sirsi, Shrimati Vasantalata Mirjankar of Kumta and Shri J. H. Shamsuddin of Bhatkal. In other words, the Respondent had nothing to do with the printing of the leaflets and the expenses incurred therefor. The Petitioner would have me believe that the propaganda carried on by the Assembly Congress Candidates was also meant for the Respondent, but that does not mean that the Respondent had knowledge of the printing and publication of the leaflets in question. He would have me further believe that the Respondent took advantage of the leaflets referred to above, but he has not indicated the manner in which the Respondent took advantage of the said leaflets. It is interesting to note that in one of the bulletins known as "Chuvavani" (ex. 46), dated 26th February 1957, published by the Petitioner, he has himself published a news-item on page 4 which is to the effect that the Respondent was carrying on his election campaign single-handed and that the Congress Workers had abandoned him (Respondent). In view of all this, it is difficult to hold that the Respondent was aware of the leaflets in question, although exhs. 35 to 39 are proved to have been got printed and published by the Assembly Congress Candidates Shri Shamsuddin and Shrimati Vasantalata Mirjankar. Even if it be assumed that the said leaflets were known to the Respondent, they cannot be used against him for the obvious reason that he had nothing to do with their printing, publication or distribution. The propaganda carried on by the Assembly Congress Candidates with the aid of these leaflets may have incidentally helped the Respondent to some extent, but the leaflets cannot be fastened on him. In fact, the evidence discloses that he did not stand in need of such leaflets to win the election, as the Congress held its sway in the Constituency and its appeal to elect candidates belonging to minority communities and weaker sex went home to the electors and they elected such candidates put up by the Congress in the Constituency.

13. *Issues Nos. 4 to 7.*—Section 100 of the Representation of the People Act, 1951, sets forth the grounds on which the election can be declared void. Two of the grounds which are germane to the present inquiry are enumerated in Clauses (b) and (d) of Sub-section (1) of Section 100 and they are (1) that any corrupt practice has been committed by a returned candidate or his agent or by any other person with the consent of a returned candidate or his election agent and (2) that the result of the election in so far as it concerns a returned candidate has been materially affected—by any corrupt practice committed in the interests of the returned candidate by a person other than that candidate or his election agent or a person acting with the consent of such candidate or his election agent. It will be seen that under clause (b), if a corrupt practice is proved to have been committed either by a returned candidate or his election agent or by any other person with the consent of a returned candidate or his election agent, the election of the returned candidate can be declared void, but under clause (d) if the corrupt practice is committed by a person other than the candidate without his consent or the consent of his election agent, the election of the returned candidate can be declared void provided two further conditions are fulfilled *viz.*, (1) that the corrupt practice was committed in the interests of the returned candidate and (2) that the result of the election, in so far as it concerns the returned candidate, has been materially affected by the commission of the corrupt practice. What is corrupt practice is explained in Section 123 of the Representation of the People Act, 1951. Undue influence is deemed to be one of the corrupt practices for the purposes of the Act, and it is defined thus in Sub-section (2) of Section 123:

"Undue influence, that is to say, any direct or indirect interference or attempt to interfere on the part of the candidate or his agent, or any of other person with the free exercise of any electoral right:

Provided that—

- (a) without prejudice to the generality of the provisions of this clause any such person as is referred to therein who—
 - (i) threatens any candidate, or any elector, or any person in whom a candidate or an elector is interested, with injury of any kind including social ostracism and excommunication or expulsion from any caste or community; or
 - (ii) induces or attempts to induce a candidate or an elector to believe that he, or any person in whom he is interested, will become or will be rendered an object of divine displeasure or spiritual censure,

shall be deemed to interfere with the free exercise of the electoral right of such candidate or elector within the meaning of this clause”.

Under Sub-section (3) of Section 123 the systematic appeal by a candidate or his agent or by any other person, to vote or refrain from voting on grounds of caste, race, community or religion or the use of, or appeal to, religious symbols or the use of, or appeal to, national symbols, such as the national flag or the national emblem, for the furtherance of the prospects of that candidate's election is also deemed to be a corrupt practice. The other corrupt practice which is relevant for the purpose of the present inquiry is the one embodied in Sub-section (4) of Section 123, and it is the publication by a candidate or his agent or by any other person of any statement of fact which is false, and which he either believes to be false or does not believe to be true, in relation to the personal character or conduct of any candidate, or in relation to the candidature, or withdrawal, or retirement, from contest, of any candidate, being a statement reasonably calculated to prejudice the prospects of that candidate's election. I have referred above to the relevant provisions of Section 123 which have been relied upon by the Petitioner in support of his contention that by reason of those corrupt practices the election of the Respondent should be declared to be void. Incidentally I may mention that the expression “electoral right” has been defined in Section 79(d) of the Act thus:

“Electoral right means the right of a person to stand or not to stand, as, or to withdraw from being, a candidate, or to vote or refrain from voting at an election”.

14. In the light of the above provisions of law, we shall see whether the leaflets (exhs. 34 to 39) and the news-item at ex. 43 fall within the mischief of Section 123. It is to be borne in mind that the Indian Law endeavours to ensure the freedom and purity of elections and is very stringent. The existence of a single instance of corrupt practice is enough to invalidate the election. Not only a returned candidate, his election agent and any other person acting with the consent of such candidate or election agent are forbidden from indulging in corrupt practices, but a person acting without the consent of the candidate or his agent also is prohibited from indulging in corrupt practices, provided, of course, he does it in the interests of the returned candidate and the result of the election, in so far as it concerns the returned candidate, has been materially affected by the commission of the corrupt practices. The definition of “undue influence” embodied in Section 123(2) is wide and elastic and is intended to embrace all kinds of interference to influence a vote, although the word “interference” has not been defined by the Act. The ingenuity of human mind must have deterred the legislature from defining the word “interference”. This apart, one thing is certain that the definition of “undue influence” lays down the various modes of interference which invalidate an election.

15. The leaflets produced by the Petitioner may be divided into three categories as follows:—

- (i) Exhibits 34, 35 (print and re-print) and ex. 36, said to be falling within the purview of Section 123(2)(a)(ii).
- (ii) Exhibit 37 (re-print) and exhs. 38 and 39, professedly coming under section 123(3), because they are said to be communal appeals.
- (iii) News-item in the Sunday edition of the Sakal newspaper of Poona (ex. 43), also professedly falling under section 123(4).

16. Exhibits 34 and 35, which are identical in terms, are purported to have been issued by Sarwadnendra Saraswati Swami Shri Swarnawalli Math Maha Samsthan of Sonda to the disciples of Swarnawalli Math. It is the case of the Petitioner that Shri Sarwadnendra Saraswati Swami is the religious head of Havik and Kshatriya communities numbering more than 100,000, not less than half of whom are voters, that by issuing leaflets of the type of exhs. 34 and 35 the Swami ordained his disciples to exercise their electoral right in favour of the Respondent alone, independent of their individual inclination, and that consequently it constitutes spiritual undue influence. There is, however, no evidence on the record with regard to the learning or the spiritual prowess of Shri Sarwadnendra Saraswati Swami. For aught we know he is the head of the Math known as “Swarnawalli Math” at Sonda. In Sirsi Taluka. The Petitioner says at ex. 33 that Sarwadnendra Swami has a large number of

disciples in Kshatriya community in the whole of North Kanara district and Sagar and Sorab Talukas in Shimoga district and also in the Havik community in Sirsi, Yellapur and Halyal Talukas in the North Kanara district. He estimates the population of these two communities in North Kanara district at about one lakh and says that being the head of the Math the Swami issues injunctions which are obeyed by his disciples implicitly. He further says that if the Swami's injunctions are disobeyed, it amounts to sin and the consequences are unpleasant. At the same time he admits in his cross-examination that the Swami has not stated in the leaflets anything regarding the consequences that may ensue if the injunctions are disobeyed and that it is merely his inference. He further admits that he has never gone to Swarnawalli Math. It is interesting to note that in his "Chunavali" bulletins (ex. 46) he has mentioned that the Swami ought not to have come down to the political arena, but in the same bulletin he has published the message of Shridhar Swami, who is held in high esteem and reverence in North Kanara district by himself and also by the members of the Havik community. He has published Shridhar Swami's message on 1st February 1957 at page 3 in ex. 46. He complains that after the result of the elections, he found that the voters did not act up to the message of Shridhar Swami. From his evidence it is easy to infer that such messages are availed of by the persons concerned merely as a guidance and not as a compulsion and that it is left to the sweet will of the voters to obey the messages or not. None from the Havik community has been examined by the Petitioner to show that the Havik community was influenced by the message of Sarwadnendra Saraswati Swami. But one Raghavendra Devappa Naik (ex. 48) who claims to be a member of the Kshatriya community, has been examined on behalf of the Petitioner. Raghavendra Naik (ex. 48) is a resident of Kodkani village. He knows the Petitioner since his childhood and respects the Petitioner. He occasionally goes to the Petitioner, who is a practising pleader at the Kunta Bar for the last 35 years. He is a landlord and his lands and those of the Petitioner are situated at one place. He admits without equivocation that the Petitioner is an intimate friend of his. He has come forward to say that he is a disciple of Sarwadnendra Saraswati Swami Shri Swarnawalli Math, who is a Sanyasi, and that the Kshatriyas of the North Kanara district and Haviks of Sirsi, Shiddapur and Yellapur are the disciples of that Math. He adds that the Kunbis (Agriculturists of Sirsi and Yellapur Talukas) are also the disciples of the Math. According to him, Narasinha is the presiding deity in that Math and Shri Sarwadnendra Swami is respected and held in reverence to the same extent to which God is respected and held in reverence. He asserts that the commands of Sarwadnendra Swami are treated and regarded as divine commands and that it is the belief of the disciples that disobedience to his commands results in misery and is a sin. It is clear from the evidence elicited in his cross-examination that he visits Swarnawalli Math once or twice a year and that he did not approach Sarwadnendra Saraswati Swami in connection with the leaflets containing his message. He says that it is his belief that Swami must have issued that message. He makes no secret of the fact that whenever he talked to the Swami he discussed with him (Swami) only about his community and nothing else, and that he never talked to the Swami on political matters. To his knowledge, the Swami has not made any speech on political matters. He is evidently an interested witness, and, therefore, his evidence will have to be taken with some amount of caution. The fact that he is interested in the Petitioner is manifest from his evidence which touches almost all the points urged by the Petitioner in his petition. In short, he is an omnibus witness and is deeply interested in supporting the Petitioner's case. Sarwadnendra Saraswati Swami may be the head of a Math, but it is difficult to hold that his message is treated and regarded as the message of God or that disobedience to his message results in misery or is a sin. In fact, the witness Raghavendra Naik (ex. 48) admits that some 10 to 15 persons had come to him seeking his advice as to for whom they should vote and that they did not tell him that the Swami of Swarnawalli Math had put them in an awkward position. In India there are several religions, castes and sub-castes and each has its own religious or spiritual head. The Hindus undoubtedly predominate, and it is common knowledge that there are several castes and sub-castes among them. They may be having spiritual or religious head to minister to their religious or spiritual yearnings, but it is too much to say that disobedience to their message or commands is irreligious or sinful. By his piety, learning, sacred character etc., a spiritual or religious head may attain the highest summit, but he does not descend to mundane world, nor does he interest himself in political or worldly affairs. If by sustained effort he becomes a denizen of the spiritual world and one with God, his word has the halo and sanctity of the word of God and is infallible. It is not known whether Sarwadnendra Saraswati Swami of Sonda has reached that height. If he had really reached it, he would never have issued the message in question so as to identify himself with a political party. But we have to bear in mind that we are concerned with the spiritual undue influence which works on the mind of the electors, majority of whom are illiterate and credulous by nature. Beyond the interested testimony of the Petitioner and his witness Raghavendra Naik (ex. 48), there is no independent evidence to show that Sarwadnendra Saraswati Swami is the religious or spiritual head of Kshatriyas and Haviks of the North Kanara district. It is obvious that the Petitioner has gone beyond his pleadings by including Kshatriyas of Sagar and Sorab Talukas in Shimoga district as the disciples of Sarwadnendra Saraswati Swami. Assuming for a moment that Sarwadnendra Saraswati Swami is the religious or spiritual head of the aforesaid two communities, it cannot be held that he has over-stepped the bounds of influence by issuing the message in question. If the message

is carefully scrutinised, it will appear clear that it is merely recommendatory and not obligatory and that it does not at all come within the mischief of Section 123. It is addressed to the disciples of Swarnawalli Math and reads thus:—

"It is our tradition to give fruit and sanctified rice to those who come to the Math. Accordingly, fruit and sanctified rice were given to Shri Dhakappa, a Candidate of the Prasava (Praja-Socialist Party), who had come yesterday. But it is noticed that Shri Dhakappa has used it in an improper manner. Therefore, the disciples who are connected with the Math should not believe that publication but should cast their votes in favour of the Congress Party which is capable of carrying on the administration of the country".

It is apparent that this leaflet is so harmless and innocuous that it will never attract Section 123. All that it conveys is that Shri Dhakappa had mis-used the Prasad, which was given to him on the previous day, for his election purposes and that, therefore, the disciples should not be carried away by Shri Dhakappa's publication. Being the Swami of the Math, he had to warn his disciples against the abuse of the Prasad by Shri Dhakappa after the mal-practices were brought to his notice. In my opinion, the Swami has performed a legitimate duty in giving guidance to his disciples by drawing their attention to the fact that the Congress Party, in his opinion, was a Party capable of shouldering the burden of the country's administration. Although he happens to be the religious head of a Math, he is still a social being with the right of exercising franchise and, therefore, he cannot isolate himself. He could exercise his undoubted influence to lead and not to mislead his disciples. He is not only entitled to exercise his right to vote but he may use his legitimate influence in helping the election of the right candidate. It is the abuse of influence on his part that the law aims to strike at and endeavour to prevent. The law permits due influence and castigates undue influence. He can be said to exercise undue influence only if there is threat of spiritual censure or divine displeasure. What is passing in his mind is important. In the present case, he does not convey any threat of divine displeasure or spiritual censure in the message issued by him. There is not even an intention to enlist the aid of God disclosed in it. Since it is free from the abuse of religious or spiritual influence, it will fall within the bounds of legitimate canvassing by a religious leader of certain communities. Legitimate influence may be exercised; its abuse is a corrupt practice. As held Fitzgerald J. in the Langford case, in the proper exercise of his influence on the electors, the priest may counsel, advise, recommend, entreat and point out the true line of moral duty, and explain why one candidate should be preferred to another, if he thinks fit, and may, throw the whole weight of his character in the scale; but he may not appeal to the fears or terrors or superstition of those he addresses. He must not hold out hopes of reward here or hereafter, and he must not use threats of temporal injury, or of disadvantage, or of punishment hereafter. He must not threaten to ex-communicate or to withhold the sacraments. The decision was followed in *Padmanabha Menon Vs. Thomas* (1 E.L.R. 404) and *Mathai Mathew Manjuran Vs. Abraham* (10 E.L.R. 376). Of course, the above decisions turned upon the influence of catholic priests and clergy. But the principles enunciated in them are also applicable to the religious head of a Hindu Math who wields some influence over his disciples. The above passage appearing in the judgement of Fitzgerald J., in the Longford case (2 O' M. and H at 16) has been quoted with approval in *Jagajeevandas Shetty Vs. Sanjeeva Shetty* (3 E.L.R. 358), and it has been held that even eminent persons in the religious and secular field are as much entitled to take part in elections and advise electors in the matter of their franchise, for the law does not strike at the existence of influence but only the abuse of influence. In *Sardulshing Caveeshar Vs. Hukam Singh* (6 E.L.R. 316) it has been held that where the influence is said to be by a religious appeal it should be shown that it was made to appear to the persons addressed that non-compliance would be considered to be irreligious or sinful.

17. Undue influence like any other fraud must be established by evidence and cannot be arrived at by conjecture. It must be exercised with an intention to affect vote.

18. For convenience and ready reference a summary is given of the limits of legitimate canvassing by the priests and clergy at page 301 in the law of Election and Election Petitions in India, by Manak Chand Pandit and Gyan Mathur, 1957 edition, in these words: "They may—

- (i) counsel their followers;
- (ii) advise them;
- (iii) recommend a particular candidate;
- (iv) entreat them to vote for a particular candidate;
- (v) point out the true line of moral duty;
- (vi) explain why one candidate is to be preferred to the other;
- (vii) throw the whole weight of their character into the canvassing;
- (viii) attend meeting to select candidates;
- (ix) express political views;

- (x) address his congregation in favour of a candidate; and
- (xi) even canvass persons for their votes.

A priest must not:

- (i) use threats of temporal injury;
- (ii) promise any spiritual advantages or rewards;
- (iii) excite superstition or fear;
- (iv) appeal to the fears or inspire despair;
- (v) support the drooping spirit by prospects of eternal happiness;
- (vi) threaten to excommunicate;
- (vii) threaten to expel from caste;
- (viii) threaten to withhold the sacraments;
- (ix) expose the voter to any religious disability;
- (x) denounce the voting for any particular candidate as a sin; or
- (xi) threaten any voter that he will become a Kafir".

19. I think, this sums up the law on the point, and in this view of the law, it is difficult to hold that the leaflets (exhibits 34 and 35) tend to vitiate the Respondent's election on the ground of spiritual undue influence as defined in Section 123(2). Even a cursory glance at these leaflets will show at once that they do not hold out any inducement, threat, promise or spiritual censure, nor do they mention that violation of the message would result in divine displeasure. In my opinion, they do not either directly or indirectly interfere or attempt to interfere with the free exercise, of any electoral right. In the context of things, they have reference to the Assembly election and the candidates contesting it and have nothing to do with the Respondent's election to the Parliamentary seat. But since they purport to convey an appeal to the electors to vote for the Congress Party, the Respondent could be included in them. At any rate, they do not materially assist the Petitioner in having the Respondent's election set aside.

20. The next leaflet which is relied on by the Petitioner is Ex. 36, which contains an appeal issued by one Shri Ratnavarma Heggade of Dharmasthal in his individual capacity. The Petitioner alleges in his petition that Shri Ratnavarma Heggade occupies a unique role in the temple of Manjunath at Dharmasthal, that it is believed that for all purposes the Heggade family man is a mouth-piece of God Manjunath and that consequently disobedience to his direction would be inviting divine displeasure. The Petitioner and his witness Raghavendra Naik (Ex. 48) seem to possess very little knowledge regarding Dharmasthal and the position which Shri Heggade occupies. Fortunately for them, the learned Advocate for the Respondent has obliged them by referring to the decision in *Jagajeevandas Shetty Vs. Sanjeeva Shetty* (3 E.L.R. 358) in which the history of the Dharmasthal temple and its trustees is traced. In that case Shri Ratnavarma Heggade's father Shri D. Manjappa, who fought the election in 1952 as a Kisan Majdoor Praja Party Candidate, had issued certain leaflets which were objected to. The Petitioner examined as many as 43 witnesses and the Respondent 48 and a fairly large volume of evidence related to the character of Manjunath temple, whether it is a famous one, whether it is a household deity in the constituency, and whether the Heggade is identified by the public with the deity. On the evidence, the Tribunal found that the Dharmasthal temple was an ancient and important temple in the district attracting a large number of worshippers and that the Manjunath, the deity installed therein, was held in great regard and veneration. The Petitioner in that case stated that the Heggade was a person having divine characteristics, that his utterances were invested with infallibility, that he was considered as a talking God and that his injunctions were obeyed abjectly and without question. Shri Ratnavarma Heggade's father was examined on commission and he stated:

"I do not claim any infallibility for my words. I am not conscious of that, but people may think so. There may be people who take my words as infallible and there may be people who do not do so".

It emerged from the evidence that Heggade had a particular seat in the temple where from at the time of the Mahapooja he gave decisions on *hollus* (plaints) if both parties appeared and agreed to abide by his decision. He did not issue any injunctions to the people at large, but only gave decision if they sought it at the temple. No commission was attached to his decisions in the temple. In this connection the Tribunal observes at page 363:

"Whatever may be his position inside the temple, it does not appear that he is looked upon as a sacred personality outside. He is a Jain *grahastha* leading a family life. He is not a *sanyasin*; nor a religious leader like the *acharyas* or *matadhipathis*; and having regard to "the accepted Hindu notions we find it difficult to believe that he is looked upon as divine or sacred.

"The Heggade has, however, a status in the public life of this district. He was a member of the Madras Legislative Council from 1925 to 1926 and from 1937 to 1952. He was an elected member of the South Kanara district Board for some time and President of the South Kanara Landholders' Association for a number of years. He has founded certain educational institutions and has also been giving encouragement to the development of art, literature and industries. He seems to command considerable influence and his help in the elections was sought after by both the Congress Party and the K.M.P. Party. But apart from the fact that he is the trustee of a rich and well-known temple and that he holds a prominent position in the public life of this district, the evidence establishes no other feature from which we can infer that he was in a position to influence the voters".

Shri Ratnavarma Heggade is presumably treading in the foot-steps of his father and his position cannot be better than that of his father. The divine influence with which he is sought to be invested is meaningless in view of the above decision. A similar leaflet was issued by his father and the Tribunal held that there was no case that any threat was held out that if they did not vote accordingly, spiritual injury would accrue to them, or that they would incur divine displeasure. At page 367 the Tribunal observes:

"We agree with the contention of the Respondent's advocate that the aforesaid passages in the context in which they appear, only set forth what according to the petitioner, was the effect of the propaganda carried on by the respondent. They do not convey that there was any representation made to the voters that it was part of the Heggade's injunction that if they did not abide by his wishes they would be subject to divine displeasure or spiritual censure. The petitioner has an alternative argument that it was implicit in the direction to vote for a particular candidate, that disobedience thereof would be met with spiritual punishment. We feel that we would not be justified in accepting this argument. Section 123 (2) makes the position clear that what is relevant is the intention of the person who actually is charged with having committed the corrupt practice. The words actually used by him are very material".

In view of the above decision which explains the position of the Heggade and his influence, the leaflet (Ex. 36) cannot be held to convey spiritual undue influence so as to attract the provisions of Section 123. All that Shri Ratnavarma says in Ex. 36 is that the citizens of North Kanara should vote for the Congress, which had a glorious history, continued sacrifice, capacity to carry on the administration of the country with ability and efficiency etc, and take service from it. It is in evidence that Shri Ratnavarma Heggade stood for the last election on the Congress ticket and came out successful. It is no wonder that being a Congress candidate, he should try to enlist the sympathy of the citizens of North Kanara district and appeal to them to vote for the Congress. It is apparent that the appeal does not hold out any threat of divine displeasure or spiritual censure and, therefore, it cannot be brought within the purview of Section 123.

21. This brings us to the next category of leaflets, viz., Exhs. 37, 38 and 39, which are characterised by the Petitioner as systematic appeals on behalf of the Respondent for the furtherance of the prospects of his election on grounds of religion and caste. As I have observed above, Ex. 37 is a re-print of the appeal issued by the leaders of the Muslim community of Dharwar district calling upon their co-religionists to elect the Congress candidates with thumping majority. It is argued on behalf of the Petitioner that since the leaflet which was printed and published in Dharwar district was re-printed in North Kanara district and distributed to the Muslim voters, it constitutes a systematic appeal on grounds of religion and caste. It seems, however, doubtful whether a re-print alone is enough to constitute systematic appeal. Moreover, the evidence of the petitioner and his witness Raghavendra Naik (Ex. 48) is not convincing enough to show that it was widely distributed among the Muslim voters. In my opinion it is not a systematic appeal but a sporadic one. This apart, I do not think that the leaflet (Ex. 37) constitutes an appeal "by any other person to vote on grounds of caste..... or religion for the furtherance of the prospects of that candidate's election" within the meaning of Sub-section (3) of Section 123. What that sub-section contemplates is that the appeal must not only be addressed to the voters, but it must rouse their conscience to vote or refrain from voting on the ground that the candidate concerned is the follower of a particular religion or belongs to a particular caste, race or community. In this connection the decision in *Moinuddin B. Harris Vs B. P. Digvi* (3 E.L.R. 248) may be referred to with advantage. In that case it has been held that the mischief which this sub-section aims at preventing is the voting for or against a candidate only because of his religion, caste, race or community. To my mind, this decision seeks to put a narrow interpretation upon the wide terms of Sub-section (3) of Section 123. In *Shankar Tripathi Vs. Returning Officer, Mirzapur* (2 E.L.R. 315) it has been held that an appeal to the Muslims to vote for the Congress candidate and that otherwise they would be turned out and would have to go to Pakistan does not involve an appeal on communal lines. In *Sardul Singh Vs. Hukam Singh* (6 E.L.R. 316) it has been laid down:

"Though in determining the scope of Section 124(5) of the Representation of the People Act, 1951 (before amendment) which makes systematic appeal to vote or refrain from voting on grounds of caste, race, community or religion a corrupt practice, regard should be had to articles 13, 19(1)(a), 25(1) and 29(1) of the Constitution, the scope of Section 124(5) cannot be narrowed down to prohibition of attacks on a particular religion or on a candidate, only on the ground that he is a follower of a particular religion. The scope of the words of Section 124(5) is much wider as it prohibits all kinds of appeals to vote on the ground of religion, whether it be the religion of the electorate or of the candidate; and even in its wider sense it would not be inconsistent with the power of the State to make laws restricting the freedom of speech and expression in the interests of security of the State etc. which is conferred by Article 19(2)."

It is clear from sub-section (3) of Section 123 (after amendment) that it speaks of a communal appeal in favour of, or against a candidate, "for the furtherance of the prospects of that candidate's election", and, therefore, the religion, caste, race or community of both the candidate and the electorate will have to be considered. In the present case, paragraph 1 of Ex. 37 praises the work done by the Prime Minister Shri Jawaharlal Nehru for the prosperity of the country and for the welfare of the minorities. It proceeds to say:

"There should be the support of all of us to the development schemes undertaken by Shri Nehru for abundant happiness, peace and contentment of the country. A great opportunity has now come at our doors to express our support".

In paragraph 2 it says that with a view to express their pride in Shri Nehru and the Congress, the Congress candidates should be returned with thumping majority. In the end it calls upon the Muslim brethren to return the Congress candidates with a thumping majority. The signatories seem to have been drawn from all walks of life. The first signatory is the President of the Hubli Municipal Borough, the second and the third are the Presidents of Anjuman-e-Islam at Gadag and Hubli, respectively, the fourth is the President of the Taluka Congress Committee, Dharwar, the fifth is the Assistant Secretary Rotary Club, Gadag, the sixth is the President, Unity Hostel, Dharwar, and the seventh is a retired Deputy Educational Inspector at Dharwar. In my opinion, Ex. 37 is a negation of communalism, as it calls upon the Muslim voters to vote for Congress candidates and not for a particular candidate on the ground that he professes Mohamedan religion. With no stretch of imagination, therefore, could it be called a systematic appeal calling upon the voters to vote or refrain from voting on grounds of religion for the furtherance of the prospects of the election of the Respondent, who is a Christian by religion, so as to attract the provisions of Section 123 (3).

22. The next leaflet (Ex. 38) purports to be an appeal issued by certain members of the Harakantra (Fisherman) community to their brethren, residing in 18 villages. The Petitioner says that it was issued by the Harakantra community people of Kumta and Honavar Talukas appealing to the members of their community on communal lines to vote for the Congress candidates and that as the result of the publication of the leaflet the Harakantra community people voted in favour of the Congress candidates without exercising their independent judgment. This is really hard to believe. It is obvious that it is the inference of the Petitioner that the Harakantra community people voted for the Congress candidates. On the face of it Ex. 38 is not a communal appeal at all. All that it says is that the members of the Harakantra community should vote for the Congress which was carrying on the administration in an orderly manner. In the end it appeals to the voters to cast their votes in the box having the symbol of a pair of bullocks without forgetting that the Congress is the only organisation toiling for the upliftment of all. I wonder how such an appeal could be called an appeal on communal lines. If the members of a particular community appreciate the work done by a particular organisation and appeal to their brethren to vote for the candidates representing that organisation, it will in no sense be called a communal appeal. On the other hand, I should think that it is the negation of communalism. Even the Petitioner admits that except the Congress organisation, there is no other organisation in India to be reckoned with and that the membership of the Congress organisation is open to all the communities. If such an organisation runs candidates for the election and if an appeal is made by certain people to vote for the candidates of that organisation, it does not amount to an appeal on communal lines. The learned pleader for the Petitioner concedes that he is unable to say that it is a systematic appeal. At any rate, it is neither a systematic appeal nor an appeal to vote in favour of any particular candidate on grounds of caste or community for the furtherance of the prospects of his election. In short, Ex. 38 does not contain any appeal to vote on communal lines, and, therefore, it cannot be pressed into service for setting aside the election of the Respondent.

23. The last leaflet under this category is Ex. 39. The learned pleader for the Petitioner concedes that he does not see much substance in the contention that Ex. 39 is on communal lines. It is evidently an appeal to the peasants and workers by the President of the

North Kanara District Peasants and Workers Sangha, Kumta. The Association may not have been in existence and the President may belong to Patgar community as contended by the Petitioner, but it is in no sense an appeal by a member of the Patgar Community to his brethren. All that it says is that the peasants and workers should prefer the Congress candidates to Devappa Ayya Naik who was their nominee but had proved to be a turn-coat. Thus, it is not a communal appeal amounting to undue influence.

24. The impugned matter under the third and the last category is a news-item published in the Sunday issue of the Sakal newspaper, dated 17th February, 1957, at Ex. 43. It purports to have been sent by the correspondent of the newspaper from Karwar under date 15th February, 1957, stating that there was a rumour that the independent candidate Shri M. D. Malagaonkar who had received monetary help from the Anti-Congress Capitalists Association had set up five candidates from his own group and had given each of them Rs. 8,000 for carrying on propaganda and that through those candidates he was carrying on propaganda for his Parliamentary seat. It is sought to be made out that this publication constitutes a corrupt practice within the meaning of Section 123(4). The Petitioner complains that the Congress party made capital out of this news-item and stated that Shri Malagaonkar was a corrupt person who could purchase votes, and that as a result of the publication of the news-item the electors swung to the side of the Congress candidates. According to him, this news-item must have been given by the Congress people. He goes on to say that he tried to ascertain from the editor of the Sakal newspaper as to who the person who gave the news-item was, but was informed that the original was destroyed. He has, however, produced a letter (Ex. 40) dated 9th July, 1957, addressed to him by the Editor Shri J. P. Deshmukh together with two cuttings of the newspaper (Exhs. 41 and 42). It is interesting to hear him say that after he came to know of the news-item within two or three days of its publication he did not approach Shri Malagaonkar and ask him about it. He does not know if Shri Malagaonkar had taken any action against the newspaper, and he had no correspondence with the editor prior to 6th July, 1957, when he wrote a letter to the editor (*Vide* copy of his letter Ex. 44). He admits that he does not recollect any editorial or news-item in that paper supporting the Congress candidates. It is in his evidence that no apology was given by the editor for the incorrect item of news. He admits that he does not know up to now as to who the correspondence is and that, therefore, he is not in a position to say as to which party the correspondent belongs. Thus, it is not proved by the Petitioner that either a Congress candidate or his agent or someone on his behalf contributed the news-item to the Sunday Sakal newspaper.

25. The original of the news-item sent to the editor of the Sakal newspaper is not forthcoming on the ground that it has been destroyed, and the Assistant Manager from the Sakal newspaper office Shri Vasudeo Damodhar Vaidya (Ex. 47), who is examined on behalf of the Petitioner, is not prepared to disclose the name of the correspondent who sent the news-item which is objected to. He endorses the contents of the letter (Ex. 40) dated 9th July, 1957, addressed to the Petitioner by the Editor in charge Shri J. P. Deshmukh, who could not attend the Court due to illness. In this letter Shri Deshmukh has stated that the news appearing in the Sunday Sakal was corrected in the second edition as the authenticity of the report of distribution of Rs. 40,000 was not verified by his office. Along with the letter, Shri Deshmukh has sent two cuttings of two editions of different dates to show that in one of them the news-item appeared while in the other it was dropped. But it is significant to note that he nowhere says that the statement of fact contained in the Sunday edition is false and that he either believes it to be false or does not believe it to be true. Shri Malagaonkar does not come forward to say that the news-item is false. He does not seem to have contradicted the offending statement for the obvious reason that the importance which is now sought to be attached to it during the course of the trial was not attached to it by him at the time of its publication and probably he did not regard it to be so serious as to require personal attention to contradict it. The Petitioner's assertion that it is false is not of much consequence. Section 123(4) of the Act provides that the following shall be deemed to be a corrupt practice:

"The Publication by a candidate or his agent or by any other person of any statement which is false and which he either believes to be false or does not believe to be true, in relation to the personal character or conduct of any candidate, or in relation to the candidature, or withdrawal, or retirement from contest, of any candidate, being a statement reasonably calculated to prejudice the prospects of that candidate's election".

It will be seen from this sub-section that the statement of fact must be false and further more it must be proved that the maker of the statement believed it to be false or did not at least believe it to be true. The burden of proving these facts undoubtedly lies on the petitioner, but he has failed to discharge that burden. In the first instance, he has failed to prove that the news-item was published on behalf of the Congress

candidates or their agents damning the candidature of Shri Malagaonkar and showing him up as a corrupt person in the eyes of the electors. He has further failed to prove that the publication was in the interest of the Respondent or that the result of the election has been materially affected by the publication. Under the circumstances, I am unable to hold that the publication of the news-item amounts to corrupt practice within the meaning of Section 123 (4).

26. From the aforesaid discussion, it will be seen that the leaflets (Exhs. 34 to 39) and the news-item (Ex. 43) do not contain matter amounting to corrupt practice and that the Respondent has nothing to do with any of them. Further, the result of the election, in so far as it concerns the Respondent as a returned candidate, has not been materially affected by the publication of the leaflets and the news-item. It is in his evidence that he was born in Udipi, South Kanara district. His home is there. His people are there. His entire High School education and early collegiate education were done in Mangalore. He is a Kannadiga and is well versed in Konkani and Kannada. He can talk colloquial Marathi. In his Constituency there are some fringes of Maharastrian population, but the preponderant majority is Kannadigas and Konkans. He was a member of the provisional Parliament from 1950 and was elected from this very Constituency in 1952 by defeating his rival Shri Dinkar Desai, a Socialist Party Candidate and a native of Hondadakkal in Kumta Taluka, by a comfortable majority of 50,000 votes in a straight fight against him. He was a sitting member when he contested the present election. He polled 1,18,580 votes as against 62,783 polled by Dr. Divekar who came next. He covered every village in his Constituency during the last election. He addressed innumerable meetings in innumerable places in his Constituency, while his opponents never addressed any meetings. Even the Petitioner's witness Raghavendra Naik (Ex. 48) admits that Shri Malagaonkar did not come at all for addressing meetings, that no propaganda meetings were held in support of Shri Malagaonkar and that except the bulletins at Ex. 46 no leaflets were distributed on his behalf. He further admits that no leaflets were distributed on behalf of Dr. Divekar or Shri Shambhu Bhat. It is clear from his evidence that the Congress was very active in the Constituency and was carrying on vigorous propaganda in favour of the Congress candidates. It is in the evidence of the Respondent that prominent all-India Congress leaders toured the entire Constituency and addressed crowded meetings everywhere in support of the Congress candidates. He categorically denies that the leaflets in question have contributed to his success at the election. He asserts that the major reason of his success as a Congress candidate is due to the base of Indian democracy—the philosophy of tolerance of Hindu race allied to the best tenets of Buddhism. According to him the Congress Working Committee made a general appeal to the Congress organisation throughout the country not only to put up Muslim, Christian, Parsee, Women and other minorities as candidates but to see that they were elected. He goes on to say that the Congress is the greatest and the best national organisation in the country, that it is not communal, that it also emphasises the secular character of the Indian Union, that its objective is to establish a welfare State on socialistic pattern, and that to that end it has undertaken extensive land and labour legislation in the various States. Apart from the claim made by him with regard to the stature of the Congress organisation, one fact stands out and it is that the appeal issued by the Congress Working Committee went home to the electors in this Constituency and Shrimati Vasantalata Vimalanad Mirjankar, who is a prominent Social worker, and Shri J. H. Shamsuddin and the Respondent, who belong to the minority communities, were elected. The Petitioner's witness Raghavendra Naik (ex. 48) admits that in 1952 when the Respondent stood for the election there was reverence for the Congress organisation, that as the Respondent stood on the Congress ticket, people voted for him, that at the time of this election also there was reverence for the Congress and that, therefore, people voted for the Congress candidates irrespective of their qualifications. Apart from the fact that the Respondent belongs to a minority community, it seems that the work done by him as a member of the Parliament has been appreciated by his Constituency and he has been returned with a comfortable majority. This view of mine gains considerable strength from the fact that he had no election agent or polling agents anywhere throughout his Constituency to work for him. At the same time it cannot be gain-said that the propaganda carried on by the Congress did come to his aid to some extent.

27. On a very careful and anxious review of all the facts and the circumstances disclosed by the evidence on the record, I have no hesitation in holding that the Petitioner has failed to substantiate his allegations regarding corrupt practices. I have shrewd suspicion that the present petition has been inspired by Shri. Malagaonkar for whom the Petitioner worked during the course of the election as a general agent. The Petitioner toured from place to place in a motor car supplied by Shri. Malagaonkar to enlist support for him. Whatever that may be, I should think that the petition is misconceived. The Petitioner is a prominent member of the Kumta Bar with a standing of 35 years and he should have seen that it was well-nigh impossible to bring any of the leaflets or the news-item in the Sunday edition of the Sakal newspaper within the mischief of Sec. 123 of the Representation of the People Act, 1951. But since he has chosen to file this petition, I think he should be made to pay a sum of Rs. 500 to the Respondent as costs of the petition.

ORDER

The petition is dismissed with costs. The Petitioner shall pay Rs. 500 to the Respondent on account of costs and bear his own.

The 20th December 1957.

(Sd.) N. S. METRANI, Member,
Election Tribunal, Karwar, at Belgaum.

[No. 82/295/57/2007.]

By Order,
A. KRISHNASWAMY AIYANGAR, Secy.

